HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 208(M/B)2005

Maneshwar Prasad Agarwal,
S/o late Sri Rameshar Prasad,
R/o Najibabad Road,
Kotdwar, Pauri Garhwal. ---------Petitioner.

Vs.

1. Judicial Magistrate, Lansdowne, Pauri Garhwal,
2. State of Uttaranchal. ---------Respondents.

Sri Sudhir Singh, learned counsel for the petitioner.
Learned G.A. for the respondents.

Coram:-Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

Hon. B.C. Kandpal, J. (Oral)

Heard Sri Sudhir Singh, learned counsel for the petitioner and learned Govt. Advocate for the respondents and perused the record.

It appears that a Crl. Case no 182/02,u/s 279, 304A, 506 IPC, Patti Mawalsyun was pending in the Court of Judicial Magistrate, Lansdowne, district Pauri Garhwal and in that case certain witnesses were examined. On 9th February 2005, the Investigating Officer of the case was present before the Court and he filed a detailed report about the whereabouts of the accidental vehicle which was the case property. As the case property i.e. the jeep involved in the accident was misplaced and its whereabouts were not know, therefore the Court below passed order on 24th August 2004 to submit report with regard to the whereabouts of the accidental vehicle.

In compliance of the order passed by the Court, the Investigating Officer has submitted detailed report. According to that report, it revealed that the vehicle was given to one Pratap Singh and he was directed not to remove the vehicle from the spot. In the course of investigation, one Soni Pal Singh, so-called owner of the vehicle, moved an application for release of the said vehicle. Consequently, a report was sought from the Investigating Officer but it was not given, hence release order could not be passed by the Court. Ultimately, it was found that the vehicle was removed and it was not examined by the Technical Expert. During the course of the trail Soni Pal Singh informed the Court on 21.07.20004 that he did not get the vehicle released form the court, hence the notice was sent to the Patwari concerned to inform the Court with regard to the whereabouts of the vehicle. In compliance of this order, the Patwari submitted his report and informed the Court that the concerned vehicle was removed prior to his joining in the concerned Patti. Subsequently, the report was submitted, from which it revealed that the Jeep was owned by some Dabbal Singh at the time of the accident. Dabbal Singh has made an agreement to sell the Jeep to Soni Pal Singh. After the accident, the vehicle was removed from the spot without any order of the Court. The Jeep was taken in a truck by a financier i.e. Sri Maneshwar Agarwal and the financier sold the said jeep to Smt. Shakuntala Devi.

Subsequently, the said Jeep was again sold by Smt. Shakuntala Devi to one Arjun Singh and at the time of passing the impugned order, it revealed that the Jeep was owned by Arjun singh and is running on Haridwar Nagibabad road.

On the basis of he aforesaid facts, the learned Trial Court came to the conclusion that the Jeep was a case property which has been dishonestly removed form the spot without obtaining

any release order from the Court and accordingly, found the petitioner Maneshwar Prasad Agarwal, alongwith another persons Pratap Sigh and Soni Pal Singh, prima-facie guilty for committing offence u/s 120B, 201,379,403 IPC. The court below also was of the opinion that the subsequent purchasers are the receivers of the stolen property hence they are i.e. Smt. Shakuntal Devi & Arjun Singh also prima-facie guilty for committing offence u/s 411, 414 IPC. The Trail Court, accordingly directed the Naib Tehsildar, Lansdowne to register a criminal case against the aforesaid persons vide its order dated 09.02.2005.

The State has filed a counter affidavit stating therein that the Court below after perusing the report, found a prima-facie case against the petitioner as well as against other persons and accordingly has passed the impugned order on 09.02.2005.

After having considered the arguments advanced by the learned counsel for he petitioner and perusing the entire record, we do not find any substance in the arguments advanced by the learned counsel for the petitioner. In our opinion, a prima-facie case is made out against the petitioner. We cannot act as a Trial Judge in order to deliver premature judgment in this case. The evidence is still incomplete and hazy and the petitioner has ample opportunity before the Trial Court to defend his case.

The petition lacks merit and its dismissed as such.

Interim order dated 11th March 05 stands vacated.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

February 27, 2006:
NCM: